

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

ANTOINE MOODY,

Plaintiff,

vs.

CITY OF ALBANY, ET. AL.,

Defendants.

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1:03-CV-75 (WLS)

ORDER

Presently pending before the Court is Plaintiff's motion to disallow Defendants' expert witness testimony. (Tab 70). For the following reasons, Plaintiff's motion (Tab 70) is **DENIED.**

Plaintiff argues that Defendants' expert's, Fred G. Robinnette, III, testimony should be excluded, or the trial postponed, because Defendants failed to produce the expert's written report as required by Fed.R.Civ.Pro. 26(a)(2). In response, Defendants essentially argue that their omission is harmless. Defendants point out that Plaintiff's motion is untimely as discovery concluded on June 1, 2004, and Plaintiff failed to file a motion to compel. Further, Plaintiff failed to raise the issue at the pretrial conference held on December 14, 2005, other than to ask for time to depose said witness. Defendants also point out that this case was consolidated for discovery purposes with the pending state court action, Moody v. City of Albany, et. al., Civli Action File No.: 03-CV-305, State Court of Dougherty County. In that action, Defendants identified Robinnette as a potential expert and stated that he would "testify about the distinction between a true allegation of excessive force and a false allegation of excessive force." While the substance of Robinnette's opinion is cursory, nothing else was required under state law. Lastly, in a sworn affidavit, Defendants' attorney asserts that Plaintiff's attorney has used Robinnette as an expert in previous cases.

Given these facts, the Court finds in utilizing its discretion under the Federal Rules that

Plaintiff has not and will not suffer any harm or prejudice by allowing the expert's testimony. Plaintiff has previously been allowed to take the deposition of said expert even though discovery has closed. Accordingly, Plaintiff's motion to exclude the expert, or in the alternative, to continue the trial, (Tab 70) is **DENIED**. Further, the parties are notified that they are to appear at the C.B. King United States Courthouse in **ALBANY, GEORGIA** on the **Tuesday the 17th day of January, 2006** at **8:30 O'CLOCK, A.M.** for the trial of this case.

SO ORDERED, this 9th day of January, 2006.

/s/W. Louis Sands
W. Louis Sands, Chief Judge
United States District Court